



NC: 2024:KHC:46131
MFA No. 5895 of 2014
C/W MFA No. 5894 of 2014
MFA No. 7570 of 2013

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA
MISCELLANEOUS FIRST APPEAL NO. 5895 OF 2014 (MV-D)

C/W

MISCELLANEOUS FIRST APPEAL NO. 5894 OF 2014
MISCELLANEOUS FIRST APPEAL NO. 7570 OF 2013 (MV-D)

IN MFA NO.5895/2014

BETWEEN:

SRI. C.L. VISHWA
S/O. SRI. LAKSHMAN
AGED ABOUT 34 YEARS,
R/AT. NAJARAYAPATNA VILLAGE AND POST
KUSHALANAGARA,
KODAGU 571 234.

... APPELLANT

(BY SRI. GURUDEVA PRASAD K.T., ADVOCATE)

AND:

1. SRI. K. SUNDARA S/O. HONNAPPA GOWDA
AGED ABOUT 46 YEARS,
R/AT. KUDAJURA HOUSE,
MANDE KOLU VILLAGE,
SULLIA TALUK 574 239
DAKSHINA KANNADA DISTRICT.



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2. THE MANAGER
THE ORIENTAL INSURANCE COMPANY LIMITED
DIVISIONAL OFFICE,
MANGALORE BEAUTY PLAZA,
BALMATTA ROAD,
MANGALORE – 575 001.
3. SMT. C.L. JYOTHI
W/O. AMEPRASAD
AGED ABOUT 36 YEARS,
R/AT. PADAKKAL VILLAGE
CHETTIMANI, MADIKERI TALUK,
KODAGU – 571 201.
4. THE MANAGER
ORIENTAL INSURANCE COMPANY LIMITED,
OPP. TOWN HALL, MADIKERI,
KODAGU – 571 201.
5. SMT. PUSHPAVENI
W/O. A.P. YADAVA
AGED ABOUT 59 YEARS,
R/AT. RADHAKRISHNA BADAVANE,
4TH BLOCK,
KUSHALANAGAR – 571 234.

...RESPONDENTS

(BY SRI. ASHOK N. PATIL, ADVOCATE FOR R2 AND R4;
NOTICE TO R1, R3 AND R5 ARE SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED 20.05.2013
PASSED IN MVC NO. 209/2009 ON THE FILE OF THE DISTRICT



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JUDGE, MACT, KODAGU, MADIKERI, DISMISSING THE CLAIM
PETITION FOR COMPENSATION.

IN MFA NO.5894/2014

BETWEEN:

SRI. C.L. VISHWA
S/O. SRI LAKSHMAN
AGED ABOUT 34 YEARS,
R/AT: NANJARAYAPATNA VILLAGE AND POST
KUSHALANAGARA,
KODAGU – 571 234.

... APPELLANT

(BY SRI. GURUDEVA PRASAD K.T., ADVOCATE)

AND:

1. SRI. K. SUNDARA S/O. HONNAPPA GOWDA
AGED ABOUT 46 YEARS,
R/AT. KUDAJURA HOUSE,
MANDE KOLU VILLAGE,
SULLIA TALUK – 574 239
DAKSHINA KANNADA DISTRICT.
2. THE MANAGER
THE ORIENTAL INSURANCE COMPANY LIMITED,
DIVISIONAL OFFICE,
MANGALORE BEAUTY PLAZA,
BALMATTA ROAD,
MANGALORE – 575 001.
3. SMT. C.L. JYOTHI
W/O. AMEPRASAD
AGED ABOUT 36 YEARS,
R/AT. PADAKKAL VILLAGE



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CHETTIMANI, MADIKERI TALUK,
KODAGU.

4. THE MANAGER
ORIENTAL INSURANCE COMPANY LIMITED,
OPP. TOWN HALL, MADIKERI,
KODAGU – 571 201.

...RESPONDENTS

(BY SRI. ASHOK N. PATIL, ADVOCATE FOR R2 AND R4;
NOTICE TO R1 AND R3 ARE SERVED)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED 20.05.2013
PASSED IN MVC NO. 208/2009 ON THE FILE OF THE DISTRICT
JUDGE, MACT, KODAGU, MADIKERI, DISMISSING THE CLAIM
PETITION FOR COMPENSATION.

IN MFA NO.7570/2013

BETWEEN:

1. SMT. PUSHPAVENI
W/O. A.P. YADAVA
AGED ABOUT 56 YEARS,
HOUSE WIFE.
2. A.P. YADAV,
S/O. LATE POOVAIAH,
AGED ABOUT 64 YEARS,
RETIRED FORESTER.

BOTH R/AT. RADHAKRISHNA BADAVANE,
IV BLOCK, KUSHALNAGAR,



SOMVARPET TALUK,
KODAGU DISTRICT – 571 234.

... APPELLANTS

(BY SRI. S.R. RAVI PRAKASH, ADVOCATE)

AND:

1. SRI. K. SUNDARA
S/O. HONNAPPA GOWDA
AGED ABOUT 44 YEARS, DRIVER
JEEP NO.KA-21-3330,
R/AT. MANDEKOLU VILLAGE,
JALSUR, SULLIA TALUK – 575 001
DAKSHINA KANNADA DISTRICT.
2. K. SANJEEVA POOJARY,
S/O. THIMMAPPA POOJARY,
KARYA HOUSE,
THENKA KAJIKAR POST
AND VILLAGE, BANTWAL TALUK,
D.K. DISTRICT-575 001.
3. THE MANAGER
THE ORIENTAL INSURANCE
COMPANY LIMITED,
DIVISIONAL OFFICE,
BEAUTY PLAZA, BALMATTA ROAD,
MANGALORE – 575 001.
4. SRI. C.L. VISHWA (PREETHU)
S/O. CHATTADKA, LAXMANA,
AGED ABOUT 32 YEARS,
R/AT: NANJARAYAPATNA VILLAGE
KUSHALNAGARA HOBLI,
SOMWARPET TALUK 571 236.
KODAGU DISTRICT.



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5. SMT. JYOTHI
W/O. LATE PRASANNA,
AGED ABOUT 35 YEARS,
R/O. CHETTIMANI VILLAGE,

BHAGAMANDALA VILLAGE
HOBLI, MADIKERE TALUK-571 201,
KODAGU DISTRICT.

...RESPONDENTS

(BY SRI. ASHOK N. PATIL, ADVOCATE FOR R1 AND R3;
SRI. K.T. GURUDEVA PRASAD, ADVOCATE FOR R4;
R5 SERVED
V/O. DATED 31.01.2019 SERVICE OF NOTICE TO
R2 IS HELD SUFFICIENT)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED 20.05.2013
PASSED IN MVC NO. 167/2009 ON THE FILE OF THE DISTRICT
JUDGE, MACT, KODAGU, MADIKERI, DISMISSING THE CLAIM
PETITION FOR COMPENSATION.

THESE APPEALS HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 06.08.2024 AND COMING ON FOR
'PRONOUNCEMENT OF JUDGMENT', THIS DAY, THIS COURT
PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA



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CAV J U D G M E N T

(PER: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA)

In these appeals, the petitioners have challenged the common judgment and award dated 20.05.2013 in MVC.Nos.167, 208 and 209 of 2009 passed by the District Judge and MACT, Kodagu-Madikeri in dismissing their claim petitions.

2. The rank of the parties shall be referred to as per their status before the Tribunal.

3. Brief facts of the case are, the petitioners in MVC.No.167/2009 are the parents whereas the petitioner-C.L.Vishwa in MVC.Nos.208 and 209 of 2009 is the husband of one Smt.A.Y.Bhagya, the deceased, who was working as a Staff Nurse at Government hospital, Periyapatna. The marriage of the deceased was performed with C.L.Vishwa 4 days prior to 27.04.2009. On the said date, the deceased was travelling in the car bearing Reg.No.KA-12/Z-845 driven by C.L.Vishwa along with his sister Smt.Jyothi, from Nanjarayapatna to Dharmastala.



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On Madikeri – Mangalore straight road, near Peraje at about 11.00 a.m. from the opposite direction, a Jeep bearing Reg.KA-21-3330 came and dashed against the car. Due to the said impact, the deceased was killed at the spot, the driver and the inmate of the car Jyothi were injured.

3.1. As the dependents of the deceased, the parents as well as husband C.L.Vishwa have filed claim petitions before the Tribunal in MVC.Nos.167 and 209 of 2009 respectively and C.L.Vishwa as an injured filed claim petition in MVC.No.208/2009. The owner and insurer of the Jeep have opposed the claim petitions contending that the driver of the jeep after seeing the opposite coming car on the wrong side, took the jeep to the left side of the road in order to avoid the accident. In spite of it, the car hit against the jeep and the complete negligence was on the part of the driver of the car. In spite of it, by using the political influence, the driver of the car got registered a criminal case against the driver of the jeep and the charge



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sheet was also filed in C.C.No.79/2009 before the C.J.M, Madikeri, after trial the driver of the jeep came to be acquitted. The driver of the jeep filed a private complaint before the Principal JMFC, Madikeri against the driver of the car and the same was referred to the police for investigation.

3.2. The jeep in question was insured with the third respondent-Oriental Insurance Co. Ltd. at the time of accident and they sought for dismissal of the claim petitions. The Tribunal, after taking the evidence and hearing both the parties, assessed that the petitioners in MVC.No.167/2009 are entitled to compensation of Rs.1,00,000/- each and the petitioner in MVC.No.208/2009 is entitled to compensation of Rs.35,000/- for the injuries and Rs.50,000/- towards death of his wife. Further held that the petitioners are not entitled to claim the said compensation as the accident was occurred due to complete negligence of the car driver and ultimately dismissed the claim petitions. Aggrieved by



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the same, the petitioners are before this Court on various grounds.

4. Heard the arguments of Sri S.R.Ravi Prakash, learned counsel for the parents of the deceased, Sri K.T.Gurudeva Prasad, learned counsel for husband of the deceased, who is also the injured and Sri Ashok N. Patil, learned counsel appearing for the owner and insurer of the jeep.

5. Sri S.R.Ravi Prakash has contended that, the marriage of the deceased was performed 4 days prior to the accident, the petitioners being the parents, they were fully depending on the deceased who was working as a Staff Nurse in the Government hospital, within 4 days of the marriage, while traveling to Dharmastala, she was killed in the accident. Hence, they are entitled to claim compensation under the loss of dependency as well as under the conventional heads. The Tribunal has not properly assessed the compensation and they being the parents of the deceased are entitled to claim



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compensation, but the Tribunal has erroneously assessed the lesser compensation and also dismissed the claim petitions.

6. Sri K.T.Gurudeva Prasad has contended that, the accident is occurred due to complete negligence on the part of the driver of the jeep. The police investigation attributed actionable negligence against the driver of the jeep, who also faced the criminal trial. The driver of the jeep came on the wrong side of the road, the driver of the car took the car to the other side to avoid the accident and the jeep was suddenly turned to the left side facilitating the car to hit against the jeep. The driver of the car has no role in the accident and complete negligence is against the driver of the jeep. The Tribunal did not consider this aspect and put the blame on the driver of the car while dismissing the claims. The compensation assessed is on the lower side. As the petitioner being the husband of the deceased and he was also injured in the accident is



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entitled to just compensation and he sought for interference.

7. Per contra, Sri Ashok N. Patil has argued with force that the jeep was driven in a cautious manner towards Madikeri, wherein the car was driven negligently towards Dharmastala, at Peraje, the car all of a sudden went offside of the road which is a wrong side to its direction. By seeing the car coming on the wrong direction, the driver of the jeep took the jeep to the left side of the road to avoid the accident. But the car was suddenly turned to the left side and hit against the jeep. Complete negligence is on the part of the driver of the car. The photographs of the spot clearly point out that the car was on the wrong side, jeep was on its right side. The driver of the jeep was acquitted of the charges as the complete negligence is against the driver of the car and it is not a case of contributory negligence. The Tribunal has rightly appreciated the evidence and ultimately held that the driver of the car was the tort-feasor, there is no



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negligence on the part of the jeep. Under such circumstances the petitioners are not entitled to claim any compensation and the Tribunal has rightly dismissed the claim petitions and he has argued in support of the impugned judgment.

8. In reply to the said argument, Sri K.T.Gurudeva Prasad with reference to the mahazar contended that, the vehicles were shifted to clear the road, the photographs have been obtained after shifting of the vehicles which were kept by the side of the road and this has been wrongly interpreted by the Insurance Company and accepted by the Tribunal. The Investigating Officer who has inspected the spot ascertained complete negligence on the part of the driver of the jeep and its driver has been charge sheeted. The acquittal of the driver of the jeep was on the ground of benefit of doubt, it was not an honorable acquittal. The involvement of the car and the jeep was established. The deceased was a passenger of the car and she is a third party, her parents are the dependants so



also the driver of the car as her husband are entitled to claim compensation as the dependants. Instead of assessing the compensation under dependency and conventional head, the Tribunal made a nominal assessment and erroneously dismissed the claim petitions.

9. I gave my anxious consideration to the arguments addressed by the learned counsel for both the parties and perused the records.

10. The Tribunal has assigned the reasons that the parents of the deceased are not the dependents and there is no evidence that they have spent any money towards funeral and obsequious and there is no evidence from the husband that he is a dependent on the deceased, and he has attended the funeral and obsequious ceremonies and utmost he is entitled to pecuniary damages towards loss of love and affection and loss of estate along with the parents of the deceased. The Tribunal also recorded that the driver of the car has suffered simple injuries to the face and neck, he was inpatient for 10 days at A.J.



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Hospital and Research Centre, Mangalore, spent around Rs.25,875/- towards medical expenses and for this reason, assessed compensation of Rs.35,000/-. Since the driver himself is the tort-feasor, his claim was also dismissed.

11. There is no dispute as to the occurrence of the accident involving the car and the jeep. The deceased was died at the spot, her husband was the driver of the car. Her parents and her husband are making separate claim for award of compensation. As regarding the deceased is concerned, she is a third party to the claim petition even otherwise accepted that her husband was the tort-feasor. The police investigation has brought out and attributed actionable negligence against the driver of the jeep for which he has faced trial in C.C.No.79/2009 before the learned C.J.M. Madikeri. Though the driver of the jeep was acquitted, the acquittal was under the benefit of doubt and it was not an honorable acquittal.

12. The driver of the jeep has entered the witness box attributing negligence against the driver of the car.



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But the cross examination has demonstrated that after seeing the opposite coming car, the jeep was taken to the right side of the road, the driver of the car after seeing the incoming jeep has taken the car to the offside and in this regard, there is a confusion between both the drivers were moved *zig zag*, ultimately tailored the accident which took away the life of the deceased, who lost her life within 4 days of her marriage.

13. The deceased was working as a Staff Nurse and her parents are the dependents, mere performance of marriage 4 days prior to the accident will not disentitle them to claim the compensation. It is strange to appreciate the argument canvassed on behalf of the Insurance Company that the parents are not the dependents. In order to assess the dependency, no evidence is required that who has performed the funeral and obsequious. The parents are the legal representatives so also the husband. Since the husband himself is said to



be the tort-feasor, the Tribunal ought to have considered the claim of the parents and assessed the compensation.

14. It is seen from the material on record including the prosecution papers, that the accident between the car and the jeep. The jeep before going to the left side has gone to the right side and the car also from left side has gone to the right side and for this reason, both have moved towards wrong direction while hitting against each other. This clearly goes to demonstrate that the negligence on the part of the driver of the car as well as the jeep. Hence the evidence clearly supports the contributory negligence by both the drivers and in the facts and circumstances one can make out clearly that the contributory negligence on the part of the driver of the car would be at 60% and that of the driver of the jeep at 40%. Accordingly, the Tribunal ought to have considered the claim petitions.

15. Regarding assessment of quantum of compensation in MVC.No.167/2009 is concerned, the



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deceased was a Government employee and as per Ex.P14- salary certificate, she was drawing salary of Rs.11,869/- paying Professional Tax of Rs.150/-. Her net salary comes to Rs.11,719/-. The deceased was aged 25 years as on the date of accident, she being a permanent Government employee, 50% of the future prospects has to be considered in the light of the judgments of the Hon'ble Apex Court in **National Insurance Co. Ltd., -vs- Pranay Sethi** and Others¹ and multiplier is to be selected in view of **Sarla Varma (Smt.) and Others -vs- Delhi Transport Corporation and Another**² so also the principle laid down in **Shri Ram General Insurance Co. Ltd. -vs- Bhagat Singh Rawat & Ors**³ regarding 10% appreciation for every 3 years under conventional heads. Since there are three dependants i.e. parents and the husband, 1/3 has to be deducted towards personal expenses and for the age of 25, the applicable multiplier is 18. Then loss of dependency will be Rs.11,719/- +

¹ (2017) 16 SCC 680

² (2009) 6 SCC 121

³ Civil Appeal Nos.2410-2412/2023, DD. 27.03.2023



$$\text{Rs.}5,859/- \text{ (50\%)} = \text{Rs.}17,578/- - \text{Rs.}5,859/- \text{ (1/3)} =$$
$$11,719/- \times 12 \times 18 = \text{Rs.}25,31,304/-.$$

16. Under the conventional heads, the petitioners being the parents and the husband, they are entitled to compensation of Rs.30,000/- each towards loss of parental consortium and loss of love and affection and Rs.10,000/- each has to be assessed towards funeral expenses and loss of estate. Since the claim is of the year 2009, 10% appreciation for every 3 years on the conventional heads is considered, it comes to Rs.1,65,000/-. Thereby total compensation comes to Rs.26,96,304/-.

17. As regarding injuries to the petitioner in MVC.No.208/2009 is concerned, the Tribunal has rightly observed that he has suffered simple injuries and assessed the compensation at Rs.35,000/- and there is no need for further enhancement. In view of the above discussion, he is entitled to 40% of it i.e. Rs.14,000/-.



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18. In view of the above, the finding recorded by the Tribunal that the parents are entitled to compensation of Rs.1,00,000/- each and the husband is entitled to compensation of Rs.50,000/- on account of death of the deceased is not proper.

19. Since the petitioner C.L.Vishwa has married the deceased just 4 days prior to the accident, 25% has to be paid to him and remaining 75% has to be paid to the parents of the deceased. Accordingly, the apportionment of compensation is to be made.

20. As regarding liability is concerned, there is no dispute as to the policy was in force and the drivers of the car as well as the jeep were holding valid driving licence as on the date of accident. Hence, the owner and the insurer of the car are held liable to deposit 60% and the owner and insurer of the jeep are held liable to deposit 40% of the compensation. Insurer is held liable to indemnify the insured.



21. In view of the above discussion, the appeals merit consideration, in the result, the following:

ORDER

- i. The appeals are **allowed in part**;
- ii. The common judgment dated 20.05.2013 insofar as MVC.Nos.167/2009, 208/2009 and 209/2009 is hereby set aside;
- iii. The claim petitions filed by the petitioners are allowed in part;
- iv. The compensation of Rs.26,96,304/- is assessed on account of death of deceased K.Y.Bhagya in MVC.No.167/2009 and compensation of Rs.14,000/- is assessed on account of injuries sustained by the petitioner in MVC.No.209/2009;
- v. The owners and insurers are jointly and severally liable to pay the compensation;
- vi. The owner and insurer of the car are directed to deposit 60% of the compensation and owner and insurer of the jeep are directed to deposit 40% of the compensation on account of death of deceased Bhagya;



- vii. The parents of the deceased are entitled to apportionment of 75% of the compensation awarded in MVC.No.167/2009;
- viii. The husband of the deceased is entitled to apportionment of 40% out of 25% of the compensation awarded in MVC.No.167/2009;
- ix. The petitioner in MVC.No.209/2009 is entitled to compensation of Rs.14,000/- from the owner and insurer of the jeep.
- x. The compensation shall carry interest at 6% p.a. from the date of petition till the date of deposit;
- xi. The Insurance Companies are directed to deposit their share of compensation with interest within 8 weeks from the date of receipt of certified copy of this judgment;
- xii. The compensation awarded to the parents of the deceased shall be apportioned equally to them.

Sd/-
(T.G. SHIVASHANKARE GOWDA)
JUDGE